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Jamie Wright, J.D., Chair  
Panel A

1 XAVIER BECERRA  
Attorney General of California  
2 MATTHEW M. DAVIS  
Supervising Deputy Attorney General  
3 JOHN S. GATSCHET  
Deputy Attorney General  
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8 *Attorneys for Complainant*

9  
10 **BEFORE THE**  
11 **MEDICAL BOARD OF CALIFORNIA**  
12 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

14 **BERNARD BACAY, M.D.**  
22777 Craig Rd.  
15 Escalon, CA 95320

16 Physician's and Surgeon's Certificate No. A 76551,  
17 Respondent.

Case No. 800-2014-008164

OAH No. 2017041118

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

18  
19  
20 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-  
21 entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. Kimberly Kirchmeyer ("Complainant") is the Executive Director of the Medical  
24 Board of California ("Board"). She brought this action solely in her official capacity and is  
25 represented in this matter by Xavier Becerra, Attorney General of the State of California, by John  
26 S. Gatschet, Deputy Attorney General.

27 2. Respondent Bernard Bacay, M.D. ("Respondent") is represented in this proceeding  
28 by attorney Peter J. Kelly, whose address is:

1 Peter J. Kelly  
2 Riggio, Mordaunt & Kelly  
3 2509 West March Lane, Ste. 200  
4 Stockton, CA 95207

5 3. On or about September 19, 2001, the Board issued Physician's and Surgeon's  
6 Certificate No. A 76551 to Respondent. The Physician's and Surgeon's Certificate was in full  
7 force and effect at all times relevant to the charges brought in Accusation No. 800-2014-008164,  
8 and will expire on August 31, 2017, unless renewed.

9 **JURISDICTION**

10 4. Accusation No. 800-2014-008164 was filed before the Board, and is currently  
11 pending against Respondent. The Accusation and all other statutorily required documents were  
12 properly served on Respondent on March 13, 2017. Respondent timely filed his Notice of  
13 Defense contesting the Accusation.

14 5. A copy of Accusation No. 800-2014-008164 is attached as exhibit A and incorporated  
15 herein by reference.

16 **ADVISEMENT AND WAIVERS**

17 6. Respondent has carefully read, fully discussed with counsel, and understands the  
18 charges and allegations in Accusation No. 800-2014-008164. Respondent has also carefully read,  
19 fully discussed with counsel, and understands the effects of this Stipulated Settlement and  
20 Disciplinary Order.

21 7. Respondent is fully aware of his legal rights in this matter, including the right to a  
22 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine  
23 the witnesses against him; the right to present evidence and to testify on his own behalf; the right  
24 to the issuance of subpoenas to compel the attendance of witnesses and the production of  
25 documents; the right to reconsideration and court review of an adverse decision; and all other  
26 rights accorded by the California Administrative Procedure Act and other applicable laws.

27 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
28 every right set forth above.

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1 **CULPABILITY**

2 9. Respondent admits the truth of each and every charge and allegation in Accusation  
3 No. 800-2014-008164.

4 10. Respondent agrees that his Physician's and Surgeon's Certificate is subject to  
5 discipline and he agrees to be bound by the Board's probationary terms as set forth in the  
6 Disciplinary Order below.

7 **CONTINGENCY**

8 11. This stipulation shall be subject to approval by the Medical Board of California.  
9 Respondent understands and agrees that counsel for Complainant and the staff of the Medical  
10 Board of California may communicate directly with the Board regarding this stipulation and  
11 settlement, without notice to or participation by Respondent or his counsel. By signing the  
12 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek  
13 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails  
14 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary  
15 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal  
16 action between the parties, and the Board shall not be disqualified from further action by having  
17 considered this matter.

18 12. The parties understand and agree that Portable Document Format (PDF) and facsimile  
19 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile  
20 signatures thereto, shall have the same force and effect as the originals.

21 13. In consideration of the foregoing admissions and stipulations, the parties agree that  
22 the Board may, without further notice or formal proceeding, issue and enter the following  
23 Disciplinary Order:

24 **DISCIPLINARY ORDER**

25 **IT IS HEREBY ORDERED** that Physician's and Surgeon's Certificate No. A 76551  
26 issued to Respondent Bernard Bacay, M.D. is revoked. However, the revocation is stayed and  
27 Respondent is placed on probation for three (3) years on the following terms and conditions.  
28

1           1.   CONTROLLED SUBSTANCES - MAINTAIN RECORDS AND ACCESS TO  
2 RECORDS AND INVENTORIES. Respondent shall maintain a record of all controlled  
3 substances ordered, prescribed, dispensed, administered, or possessed by Respondent, and any  
4 recommendation or approval which enables a patient or patient's primary caregiver to possess or  
5 cultivate marijuana for the personal medical purposes of the patient within the meaning of Health  
6 and Safety Code section 11362.5, during probation, showing all of the following: 1) the name and  
7 address of the patient; 2) the date; 3) the character and quantity of controlled substances involved;  
8 and 4) the indications and diagnosis for which the controlled substances were furnished.

9           Respondent shall keep these records in a separate file or ledger, in chronological order. All  
10 records and any inventories of controlled substances shall be available for immediate inspection  
11 and copying on the premises by the Board or its designee at all times during business hours and  
12 shall be retained for the entire term of probation.

13           2.   EDUCATION COURSE. Within 60 calendar days of the effective date of this  
14 Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee  
15 for its prior approval educational program(s) or course(s) which shall not be less than 20  
16 additional hours per year, for each year of probation. The educational program(s) or course(s)  
17 shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I  
18 certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be  
19 in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.  
20 Following the completion of each course, the Board or its designee may administer an  
21 examination to test Respondent's knowledge of the course. Respondent shall provide proof of  
22 attendance for a total of 45 hours of CME of which 20 hours were in satisfaction of this condition.

23           3.   PRESCRIBING PRACTICES COURSE. Within 60 calendar days of the effective  
24 date of this Decision, Respondent shall enroll in a course in prescribing practices approved in  
25 advance by the Board or its designee. Respondent shall provide the approved course provider  
26 with any information and documents that the approved course provider may deem pertinent.  
27 Respondent shall participate in and successfully complete the classroom component of the course  
28 not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully

1 complete any other component of the course within one (1) year of enrollment. The prescribing  
2 practices course shall be at Respondent's expense and shall be in addition to the Continuing  
3 Medical Education (CME) requirements for renewal of licensure. The prescribing practices  
4 course shall be in addition to the requirements set forth requiring 20 additional hours of CME per  
5 year.

6 A prescribing practices course taken after the acts that gave rise to the charges in the  
7 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board  
8 or its designee, be accepted towards the fulfillment of this condition if the course would have  
9 been approved by the Board or its designee had the course been taken after the effective date of  
10 this Decision.

11 Respondent shall submit a certification of successful completion to the Board or its  
12 designee not later than 15 calendar days after successfully completing the course, or not later than  
13 15 calendar days after the effective date of the Decision, whichever is later.

14 4. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective  
15 date of this Decision, Respondent shall enroll in a course in medical record keeping approved in  
16 advance by the Board or its designee. Respondent shall provide the approved course provider  
17 with any information and documents that the approved course provider may deem pertinent.  
18 Respondent shall participate in and successfully complete the classroom component of the course  
19 not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully  
20 complete any other component of the course within one (1) year of enrollment. The medical  
21 record keeping course shall be at Respondent's expense and shall be in addition to the Continuing  
22 Medical Education (CME) requirements for renewal of licensure. The medical record keeping  
23 course shall be in addition to the requirements set forth requiring 20 additional hours of CME per  
24 year.

25 A medical record keeping course taken after the acts that gave rise to the charges in the  
26 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board  
27 or its designee, be accepted towards the fulfillment of this condition if the course would have

28 ///

1  
2 been approved by the Board or its designee had the course been taken after the effective date of  
3 this Decision.

4 Respondent shall submit a certification of successful completion to the Board or its  
5 designee not later than 15 calendar days after successfully completing the course, or not later than  
6 15 calendar days after the effective date of the Decision, whichever is later.

7 5. MONITORING - PRACTICE/BILLING. Within 30 calendar days of the effective  
8 date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a  
9 practice monitor(s), the name and qualifications of one or more licensed physicians and surgeons  
10 whose licenses are valid and in good standing, and who are preferably American Board of  
11 Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or  
12 personal relationship with Respondent, or other relationship that could reasonably be expected to  
13 compromise the ability of the monitor to render fair and unbiased reports to the Board, including  
14 but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree  
15 to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

16 The Board or its designee shall provide the approved monitor with copies of the Decision(s)  
17 and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the  
18 Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed  
19 statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role  
20 of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees  
21 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the  
22 signed statement for approval by the Board or its designee.

23 Within 60 calendar days of the effective date of this Decision, and continuing throughout  
24 each year of probation, Respondent's practice shall be monitored by the approved monitor.  
25 Respondent shall make all records available for immediate inspection and copying on the  
26 premises by the monitor at all times during business hours and shall retain the records for the  
27 entire term of probation.

28 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective

1 date of this Decision, Respondent shall receive a notification from the Board or its designee to  
2 cease the practice of medicine within three (3) calendar days after being so notified. Respondent  
3 shall cease the practice of medicine until a monitor is approved to provide monitoring  
4 responsibility.

5 The monitor(s) shall submit a quarterly written report to the Board or its designee which  
6 includes an evaluation of Respondent's performance, indicating whether Respondent's practices  
7 are within the standards of practice of medicine and whether Respondent is practicing medicine  
8 safely, billing appropriately or both. It shall be the sole responsibility of Respondent to ensure  
9 that the monitor submits the quarterly written reports to the Board or its designee within 10  
10 calendar days after the end of the preceding quarter.

11 At the conclusion of each year of monitoring, the practice monitor shall submit a yearly  
12 written report to the Board which shall indicate whether the Respondent is practicing medicine  
13 safely and whether areas of practice deficiency have been corrected. If the practice monitor  
14 determines that Respondent no longer needs further practice monitoring and so states in the  
15 yearly written report and the Board in its sole discretion determines that further practice  
16 monitoring is no longer needed, this condition shall be deemed satisfied and will no longer be  
17 enforced as part of Respondent's probation. If the practice monitor identifies areas of continued  
18 deficiency that require additional monitoring and/or the Board determines additional practice  
19 monitoring is needed, this condition shall extend for an additional year of probation.

20 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of  
21 such resignation or unavailability, submit to the Board or its designee, for prior approval, the  
22 name and qualifications of a replacement monitor who will be assuming that responsibility within  
23 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60  
24 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a  
25 notification from the Board or its designee to cease the practice of medicine within three (3)  
26 calendar days after being so notified. Respondent shall cease the practice of medicine until a  
27 replacement monitor is approved and assumes monitoring responsibility.

28 In lieu of a monitor, Respondent may participate in a professional enhancement program



1 approved in advance by the Board or its designee that includes, at minimum, quarterly chart  
2 review, semi-annual practice assessment, and semi-annual review of professional growth and  
3 education. Respondent shall participate in the professional enhancement program at Respondent's  
4 expense during the term of probation.

5 6. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the  
6 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the  
7 Chief Executive Officer at every hospital where privileges or membership are extended to  
8 Respondent, at any other facility where Respondent engages in the practice of medicine,  
9 including all physician and locum tenens registries or other similar agencies, and to the Chief  
10 Executive Officer at every insurance carrier which extends malpractice insurance coverage to  
11 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15  
12 calendar days.

13 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

14 7. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE  
15 NURSES. During the period of probation, Respondent shall be allowed to supervise two Nurse  
16 Practitioners that currently work in his practice, identified as Nurse Practitioner C. M. and Nurse  
17 Practitioner S. H.-T., but shall be prohibited from hiring and supervising additional physician  
18 assistant and advanced practice nurses.

19 8. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules  
20 governing the practice of medicine in California and remain in full compliance with any court  
21 ordered criminal probation, payments, and other orders.

22 9. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations  
23 under penalty of perjury on forms provided by the Board, stating whether there has been  
24 compliance with all the conditions of probation.

25 Respondent shall submit quarterly declarations not later than 10 calendar days after the end  
26 of the preceding quarter.

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1        10. GENERAL PROBATION REQUIREMENTS.

2        Compliance with Probation Unit

3        Respondent shall comply with the Board's probation unit.

4        Address Changes

5        Respondent shall, at all times, keep the Board informed of Respondent's business and  
6        residence addresses, email address (if available), and telephone number. Changes of such  
7        addresses shall be immediately communicated in writing to the Board or its designee. Under no  
8        circumstances shall a post office box serve as an address of record, except as allowed by Business  
9        and Professions Code section 2021(b).

10       Place of Practice

11       Respondent shall not engage in the practice of medicine in Respondent's or patient's place  
12       of residence, unless the patient resides in a skilled nursing facility or other similar licensed  
13       facility.

14       License Renewal

15       Respondent shall maintain a current and renewed California physician's and surgeon's  
16       license.

17       Travel or Residence Outside California

18       Respondent shall immediately inform the Board or its designee, in writing, of travel to any  
19       areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty  
20       (30) calendar days.

21       In the event Respondent should leave the State of California to reside or to practice.  
22       Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of  
23       departure and return.

24       11. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be  
25       available in person upon request for interviews either at Respondent's place of business or at the  
26       probation unit office, with or without prior notice throughout the term of probation.

27       12. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or  
28       its designee in writing within 15 calendar days of any periods of non-practice lasting more than

1 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is  
2 defined as any period of time Respondent is not practicing medicine as defined in Business and  
3 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct  
4 patient care, clinical activity or teaching, or other activity as approved by the Board. If  
5 Respondent resides in California and is considered to be in non-practice, Respondent shall  
6 comply with all terms and conditions of probation. All time spent in an intensive training  
7 program which has been approved by the Board or its designee shall not be considered non-  
8 practice and does not relieve Respondent from complying with all the terms and conditions of  
9 probation. Practicing medicine in another state of the United States or Federal jurisdiction while  
10 on probation with the medical licensing authority of that state or jurisdiction shall not be  
11 considered non-practice. A Board-ordered suspension of practice shall not be considered as a  
12 period of non-practice.

13 In the event Respondent's period of non-practice while on probation exceeds 18 calendar  
14 months, Respondent shall successfully complete the Federation of State Medical Board's Special  
15 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program  
16 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model  
17 Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

18 Respondent's period of non-practice while on probation shall not exceed two (2) years.

19 Periods of non-practice will not apply to the reduction of the probationary term.

20 Periods of non-practice for a Respondent residing outside of California will relieve  
21 Respondent of the responsibility to comply with the probationary terms and conditions with the  
22 exception of this condition and the following terms and conditions of probation: Obey All Laws;  
23 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or  
24 Controlled Substances; and Biological Fluid Testing.

25 13. COMPLETION OF PROBATION. Respondent shall comply with all financial  
26 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the  
27 completion of probation. Upon successful completion of probation, Respondent's certificate shall  
28 be fully restored.

1        14. VIOLETION OF PROBATION. Failure to fully comply with any term or condition  
2 of probation is a violation of probation. If Respondent violates probation in any respect, the  
3 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and  
4 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,  
5 or an Interim Suspension Order is filed against Respondent during probation, the Board shall have  
6 continuing jurisdiction until the matter is final, and the period of probation shall be extended until  
7 the matter is final.

8        15. LICENSE SURRENDER. Following the effective date of this Decision, if  
9 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy  
10 the terms and conditions of probation, Respondent may request to surrender his or her license.  
11 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in  
12 determining whether or not to grant the request, or to take any other action deemed appropriate  
13 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent  
14 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its  
15 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject  
16 to the terms and conditions of probation. If Respondent re-applies for a medical license, the  
17 application shall be treated as a petition for reinstatement of a revoked certificate.

18        16. PROBATION MONITORING COSTS. Respondent shall pay the costs associated  
19 with probation monitoring each and every year of probation, as designated by the Board, which  
20 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of  
21 California and delivered to the Board or its designee no later than January 31 of each calendar  
22 year.

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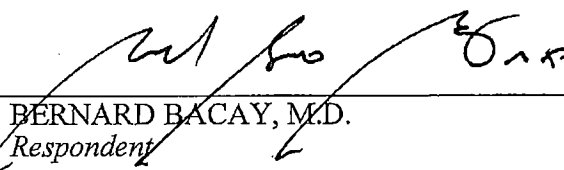
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1 ACCEPTANCE


2 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
3 discussed it with my attorney, Peter J. Kelly. I understand the stipulation and the effect it will  
4 have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and  
5 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the  
6 Decision and Order of the Medical Board of California.

7  
8 DATED: 8/14/17

  
9 BERNARD BACAY, M.D.  
Respondent

10 I have read and fully discussed with Respondent Bernard Bacay, M.D. the terms and  
11 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.  
12 I approve its form and content.

13 DATED: 8/14/17

  
14 PETER J. KELLY  
Attorney for Respondent

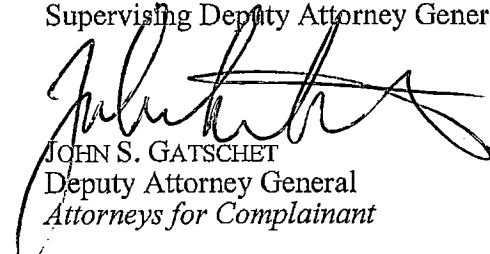
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16 ENDORSEMENT

17 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
18 submitted for consideration by the Medical Board of California.

19 Dated: 8-15-17

Respectfully submitted,

20 XAVIER BECERRA  
Attorney General of California  
21 MATTHEW M. DAVIS  
Supervising Deputy Attorney General

  
22 JOHN S. GATSCHET  
23 Deputy Attorney General  
24 Attorneys for Complainant

25  
26  
27  
28 SA2017303226  
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**Exhibit A**

**Accusation No. 800-2014-008164**

1 XAVIER BECERRA  
Attorney General of California  
2 MATTHEW M. DAVIS  
Supervising Deputy Attorney General  
3 JOHN S. GATSCHET  
Deputy Attorney General  
4 State Bar No. 244388  
California Department of Justice  
5 1300 I Street, Suite 125  
P.O. Box 944255  
6 Sacramento, CA 94244-2550  
Telephone: (916) 445-5230  
7 Facsimile: (916) 327-2247

8 *Attorneys for Complainant*

10 BEFORE THE  
11 MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
12 STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 800-2014-008164

14 **Bernard Bacay, M.D.**  
22777 CRAIG RD  
15 ESCALON, CA 95320

ACCUSATION

16 Physician's and Surgeon's Certificate No. A 76551,  
17 Respondent.

18  
19 Complainant alleges:

20 PARTIES

21 1. Kimberly Kirchmeyer ("Complainant") brings this Accusation solely in her official  
22 capacity as the Executive Director of the Medical Board of California, Department of Consumer  
23 Affairs ("Board").

24 2. On or about September 19, 2001, the Medical Board issued Physician's and  
25 Surgeon's Certificate No. A 76551 to Bernard Bacay, M.D. ("Respondent"). The Physician's and  
26 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought  
27 herein and will expire on August 31, 2017, unless renewed.

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**JURISDICTION**

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

5. Section 2234 of the Code, states, in pertinent part:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"...

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

"..."

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///



1           6.     Section 2266 of the Code states:

2           “The failure of a physician and surgeon to maintain adequate and accurate records relating  
3 to the provision of services to their patients constitutes unprofessional conduct.”

4                                 DRUGS

5           7.     Hydrocodone with acetaminophen – Generic name for the drugs Vicodin, Norco, and  
6 Lortab. Hydrocodone with acetaminophen is classified as a short-acting opioid analgesic  
7 combination product used to treat moderate to moderately severe pain. Prior to October 6, 2014,  
8 Hydrocodone with acetaminophen was a Schedule III controlled substance pursuant to Code of  
9 Federal Regulations Title 21 section 1308.13(e).<sup>1</sup> Hydrocodone with acetaminophen is a  
10 dangerous drug pursuant to California Business and Professions Code section 4022 and is a  
11 Schedule II controlled substance pursuant to California Health and Safety Code section 11055,  
12 subdivision (b).

13          8.     Hydromorphone hydrochloride – Generic name for the drug Dilaudid.  
14 Hydromorphone hydrochloride (“hcl”) is a potent opioid agonist that has a high potential for  
15 abuse and risk of producing respiratory depression. Hydromorphone hcl is a short-acting  
16 medication used to treat severe pain. Hydromorphone hcl is a Schedule II controlled substance  
17 pursuant to Code of Federal Regulations Title 21 section 1308.12. Hydromorphone hcl is a  
18 dangerous drug pursuant to California Business and Professions Code section 4022 and is a  
19 Schedule II controlled substance pursuant to California Health and Safety Code section 11055(b).

20          9.     Fentanyl – Generic name for the drug Duragesic. Fentanyl is a potent, synthetic  
21 opioid analgesic with a rapid onset and short duration of action used for pain. The fentanyl  
22 transdermal patch is used for long term chronic pain. It has an extremely high danger of abuse  
23 and can lead to addiction as the medication is estimated to be 80 times more potent than morphine  
24 and hundreds of times more potent than heroin.<sup>2</sup> Fentanyl is a Schedule II controlled substance  
25 pursuant to Code of Federal Regulations Title 21 section 1308.12. Fentanyl is a dangerous drug

26                     <sup>1</sup> On October 6, 2014, Hydrocodone combination products were reclassified as Schedule II  
27 controlled substances. Federal Register Volume 79, Number 163. Code of Federal Regulations  
28 Title 21 section 1308.12.

<sup>2</sup> [http://www.cdc.gov/niosh/ershdb/EmergencyResponseCard\\_29750022.html](http://www.cdc.gov/niosh/ershdb/EmergencyResponseCard_29750022.html)

1 pursuant to California Business and Professions Code section 4022 and is a Schedule II controlled  
2 substance pursuant to California Health and Safety Code section 11055(c).

3 10. Oxymorphone hydrochloride – Generic name for the drug Opana ER. Oxymorphone  
4 hydrochloride (hcl) is long-acting opioid analgesic used to relieve severe ongoing pain.  
5 Oxymorphone has a high risk for abuse and severe, possibly fatal, breathing problems if taken in  
6 the wrong dosage, strength, or with other drugs that might also affect breathing. Oxymorphone  
7 hydrochloride is a Schedule II controlled substance pursuant to Code of Federal Regulations Title  
8 21 section 1308.12. Oxymorphone hydrochloride is a dangerous drug pursuant to California  
9 Business and Professions Code section 4022 and is a Schedule II controlled substance pursuant to  
10 California Health and Safety Code section 11055(b).

11 11. Alprazolam – Generic name for the drug Xanax. Alprazolam is a short acting  
12 benzodiazepine used to treat anxiety. Alprazolam is a Schedule IV controlled substance pursuant  
13 to Code of Federal Regulations Title 21 section 1308.14. Alprazolam is a dangerous drug  
14 pursuant to California Business and Professions Code section 4022 and is a Schedule IV  
15 controlled substance pursuant to California Health and Safety Code section 11057(d).

16 12. Diazepam – Generic name for Valium. Diazepam is a long-acting member of the  
17 benzodiazepine family used for the treatment of anxiety and panic attacks. Diazepam is a  
18 Schedule IV controlled substance pursuant to Code of Federal Regulations Title 21 section  
19 1308.14(c) and Health and Safety Code section 11057, subdivision (d), and a dangerous drug  
20 pursuant to Business and Professions Code section 4022.

21 13. Zolpidem Tartrate – Generic name for Ambien. Zolpidem Tartrate is a sedative and  
22 hypnotic used for short term treatment of insomnia. Zolpidem Tartrate is a Schedule IV  
23 controlled substance pursuant to Code of Federal Regulations Title 21 section 1308.14(c). It is a  
24 Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision  
25 (d), and a dangerous drug pursuant to Business and Professions Code section 4022.

26 14. Tramadol – Generic name for the drug Ultram. Tramadol is an opioid pain  
27 medication used to treat moderate to moderately severe pain. Effective August 18, 2014,  
28 Tramadol was placed into Schedule IV of the Controlled Substances Act pursuant to Code of

1 Federal Regulations Title 21 section 1308.14(b). It is a dangerous drug pursuant to Business and  
2 Professions Code section 4022.

3 15. Buprenorphine – Generic name for the drug Butrans. Buprenorphine, a narcotic  
4 analgesic, when sold as Butrans, consists of an extended release transdermal film which is  
5 prescribed for the management of moderate to severe chronic pain in patients requiring a  
6 continuous, extended period, around-the-clock opioid analgesic. Buprenorphine is a Schedule III  
7 controlled substance pursuant to Code of Federal Regulations Title 21 section 1308.13,  
8 subdivision (e). Buprenorphine is a Schedule V controlled substance pursuant to Health and  
9 Safety Code section 11058, subdivision (d), and a dangerous drug pursuant to Business and  
10 Professions Code section 4022.

### 11 FIRST CAUSE FOR DISCIPLINE

#### 12 (Repeated Negligent Acts, Patients D.B. and V.E.<sup>3</sup>)

13 16. Respondent's license is subject to disciplinary action under section 2234, subdivision  
14 (c), of the Code, in that he committed repeated negligent acts during the treatment of two patients.  
15 The circumstances are as follows:

#### 16 Patient D.B.

17 17. On or about March 15, 2011, Respondent initially saw Patient D.B. who presented for  
18 back pain and fatigue. Respondent noted that Patient D.B. was previously prescribed Norco and  
19 Tramadol. Respondent prescribed Amrix<sup>4</sup>. Respondent did not fully document Patient D.B.'s  
20 prior pain medication usage, prior response to pain medication and/or a prior substance abuse  
21 history. Respondent diagnosed Patient D.B. with back pain and fatigue.

22 18. On or about May 9, 2011, Respondent saw Patient D.B. for follow-up regarding back  
23 pain. Patient D.B. also mentioned issues with his left shoulder. Respondent prescribed a Butrans  
24 5 mcg. per hour patch for pain control. The patient stated he preferred not to take Norco.  
25 Respondent did not fully document Patient D.B.'s prior pain medication usage, prior response to

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27 <sup>3</sup> Patients are identified by initial to protect their privacy. All witnesses will be fully  
identified in discovery.

28 <sup>4</sup> Generically known as Cyclobenzaprine, a muscle relaxant.

1 pain medication and/or a prior substance abuse history before prescribing Butrans, a controlled  
2 substance. Respondent also prescribed Butrans on June 3, 2011, to Patient D.B.

3 19. On or about August 26, 2011, Respondent again saw Patient D.B. for back pain.  
4 Respondent prescribed Amrix and Tramadol. Respondent noted that Patient D.B. had not tried  
5 nonsteroidal anti-inflammatory drugs ("NSAIDS"), such as Naproxen or Ibuprofen, for pain.  
6 Respondent also noted that the patient prefers to not take Norco due to "addicting potential."  
7 Respondent did not fully document Patient D.B.'s prior pain medication usage, prior response to  
8 pain medication and/or a prior substance abuse history.

9 20. On or about February 27, 2012, Dr. M.B., Respondent's wife and business partner,  
10 authorized a prescription of 90 tablet of 10/325 mg. Norco for Patient D.B. On or about March  
11 27, 2012, Dr. M.B. refilled the 90 tablets of 10/325 mg. Norco prescription. On or about March  
12 26, 2012, Respondent documented seeing Patient D.B. for a lump in the right side of his throat.  
13 Respondent noted that Patient D.B.'s left shoulder had "tender stiffness" and that his left lower  
14 leg(s) were "tender." Respondent noted that Patient D.B. was now receiving 4 tablets of 10/325  
15 mg. Norco per day and 1 tablet of 5 mg. Ambien per day. Respondent did not document why  
16 Patient D.B. was now being prescribed Norco despite Patient D.B. previously stating that he  
17 preferred to not be on the medication. Respondent did not fully document Patient D.B.'s prior  
18 pain medication usage, prior response to pain medication and/or a prior substance abuse history.  
19 Patient D.B. continued to receive refills of his Norco prescription following the appointment on  
20 February 27, 2012.

21 21. On or about September 24, 2012, Respondent saw Patient D.B. regarding a chronic  
22 history of recurrent shoulder pain. Respondent noted that Patient D.B. was taking 4 tablets of  
23 10/325 mg. Norco and 4 tablets of 50 mg. Tramadol each day. Respondent noted that Patient  
24 D.B. was also receiving 1 tablet of 1 mg. of Xanax and 1 tablet of 12.5 mg. of Ambien from  
25 another medical practitioner, Dr. H. Respondent prescribed 30 tablets of 2 mg. of Valium as  
26 needed for muscle spasms. Respondent did not document why he was prescribing an additional  
27 benzodiazepine to Patient D.B. Respondent did not fully document Patient D.B.'s prior pain

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1 medication usage, prior response to pain medication and/or a prior substance abuse history when  
2 he prescribed a second benzodiazepine.

3 22. Beginning on or about December 20, 2012, Respondent began prescribing Opana E.R.  
4 and Dilaudid to Patient D.B. because of "worsening pain which now is constant." Respondent  
5 documented that he advised Patient D.B. to discontinue Norco. In capital letters it was noted that  
6 Patient D.B. had missed an appointment on December 6, 2012, due to his wife having a health  
7 emergency. Respondent did not fully document Patient D.B.'s prior pain medication usage, prior  
8 response to pain medication and/or prior substance abuse history when he changed Patient D.B.'s  
9 medications.

10 23. On or about December 20, 2012, Respondent prescribed 60 tablets of 10 mg. Opana  
11 ER and 45 tablets of 2 mg. Dilaudid to Patient D.B. On or about January 15, 2013, Respondent  
12 prescribed 45 tablets of 2 mg. Dilaudid to Patient D.B. On or about January 19, 2013,  
13 Respondent prescribed 60 tablets of 20 mg. Opana ER to Patient D.B. On or about February 4,  
14 2013, Respondent refilled 90 tablets of 10/325 mg. Norco to Patient D.B. On or about February  
15 13, 2013, Dr. M.B. prescribed 60 tablets of 20 mg. Opana ER and 45 tablets of 2 mg. Dilaudid to  
16 Patient D.B. On or about March 1, 2013, Respondent prescribed 60 tablets of 15 mg. Opana ER  
17 and 90 tablets of 10/325 mg. Norco to Patient D.B. On or about March 15, 2013, Respondent  
18 prescribed 60 tablets of 30 mg. Opana ER to Patient D.B. On or about March 18, 2013,  
19 Respondent prescribed 45 tablets of 2 mg. Dilaudid and 45 tablets of 10/325 mg. Norco to Patient  
20 D.B.

21 24. On or about April 13, 2013, Respondent prescribed 60 tablets of 30 mg Opana ER, 45  
22 tablets of 10/325 mg. Norco, and 45 tablets of 2 mg. Dilaudid to Patient D.B. Assuming that the  
23 prescription provided by Respondent on April 13, 2013, was for one month, Patient D.B.'s  
24 morphine equivalent dose was approximately 207 MED<sup>5</sup>. Just six months earlier, on September  
25 24, 2012, Patient D.B.'s morphine equivalent dose was approximately 70 MED. On or about May

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27 <sup>5</sup> An MED is a numerical standard against which most opioids can be compared, yielding  
28 a comparison of each medication's potency. An MED helps determine if the patient's opioid  
doses are excessive.

1 10, 2013, Respondent prescribed 60 tablets of 30 mg. Opana ER and 60 tablets of 10/325 mg.  
2 Norco to Patient D.B. Respondent failed to document why he had prescribed two short acting  
3 opioids, Norco and Dilaudid, at the same time to Patient D.B. between January 2013 and April  
4 2013. Respondent failed to fully document Patient D.B.'s prior pain medication usage, prior  
5 response to pain medications and/or a prior substance abuse history when he increased Patient  
6 D.B.'s opioid prescriptions.

7 Patient V.E.

8 25. The Board has obtained all of Patient V.E.'s certified medical records between  
9 January 9, 2009, and October 5, 2015. There are approximately 41 clinical visits documented in  
10 Patient V.E.'s medical chart. Approximately 36 of the clinical visits were conducted by  
11 Respondent. On or about January 30, 2009, Respondent admitted Patient V.E. to the hospital for  
12 pneumonia. Respondent documented that Patient V.E. was currently being prescribed a 75  
13 mcg./hr. Fentanyl patch for pain. The medication list at hospital discharge on February 2, 2009,  
14 notes that Patient V.E. was being discharged on a 100 mcg./hr. Fentanyl patch. On or about  
15 February 6, 2009, Respondent prescribed 10 patches 50 mcg./hr. Fentanyl patches to Patient V.E.  
16 Respondent continued to prescribe 10 patches of 50 mcg./hr. Fentanyl patches to Patient V.E. on  
17 a monthly basis through October 5, 2015.

18 26. Despite prescribing Fentanyl on a monthly basis to Patient V.E. between February  
19 2009 and October 2015, a review of Patient V.E.'s medical chart reveals that Respondent failed to  
20 document Patient V.E.'s current pain assessment at each clinical visit. Patient V.E.'s medical  
21 records do not contain any documentation related to substance abuse history or any history of  
22 prior pain management treatments. There is no documentation in Patient V.E.'s medical records  
23 regarding Patient V.E.'s response to Fentanyl and there is no evidence that Respondent performed  
24 a periodic review of Patient V.E.'s course of pain treatment.

25 27. Respondent's actions represented repeated negligent acts for the following reasons:

26 1. Failure to adequately document Patient D.B.'s substance abuse history, prior  
27 alcohol intake, and history of prior pain treatments in the medical records between March 15,  
28 2011, and May 10, 2013, was a departure from the standard of care;

1           2. Prescribing an additional benzodiazepine to Patient D.B. while he was already on a  
2 benzodiazepine and prescribing multiple short acting narcotics at the same time between January  
3 2013 and April 2013 to Patient D.B. without documenting adequate medical justification, was a  
4 departure from the standard of care; and,

5           3. Failure to adequately document Patient V.E.'s pain assessment during clinical  
6 visits, history of prior pain treatments, substance abuse history, response to Fentanyl, and a  
7 periodic review of the course of Patient V.E.'s pain treatment, was a departure from the standard  
8 of care.

9                                   **SECOND CAUSE FOR DISCIPLINE**

10                                   **(Inadequate Medical Records)**

11           28. Respondent's license is subject to disciplinary action under section 2266 of the Code,  
12 in that the records of his care and treatment of two patients were either inaccurate or inadequate or  
13 both. The circumstances are as follows:

14           29. The allegations of paragraphs 16 to 26 above are incorporated herein by reference.

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4. Taking such other and further action as deemed necessary and proper.

  
KIMBERLY KIRCHMEYER  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California  
*Complainant*

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